**_Duran Gonzalez_ Class Members: January 21, 2016 Deadline Approaching**
*USICIS Issued Updated Policy Memorandum*

*Duran Gonzalez* class members have only until **January 21, 2016** to seek relief under the settlement agreement. Under the agreement, class members must file either 1) requests to USCIS to reopen adjustment applications (for subclass A members); 2) requests with ICE to file joint motions to reopen with the immigration court or BIA (for subclass B members); or 3) requests to USCIS to file a service motion to reopen if the Department of State has found a subclass C member ineligible for consular processing because the person is inadmissible under INA § 212(a)(9)(C)(i)(II).

**Background on _Duran Gonzalez_:**

*Duran Gonzalez* is a Ninth Circuit-wide class action challenging DHS' refusal to follow *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). In *Perez-Gonzalez*, the Ninth Circuit held that individuals who had been removed or deported may nonetheless apply for adjustment of status (under INA § 245(i)) along with an accompanying I-212 waiver application. In *Duran Gonzales v. DHS*, 508 F.3d 1227 (9th Cir. 2007), the Ninth Circuit overturned *Perez-Gonzalez*, deferring to the BIA's holding that individuals who have previously been removed or deported are not eligible to apply for adjustment of status. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). However, in *Duran Gonzales v. DHS*, 712 F.3d 1271 (9th Cir. 2013) (*Duran Gonzales III*), the Court found that some plaintiffs may be able to establish that the new rule should not apply retroactively. Subsequently, on July 22, 2014, the District Court approved a settlement agreement and issued a final judgment in the case that established a framework to reopen cases for class members who had submitted an adjustment of status application and I-212 waiver application on or after August 13, 2004 and on or before November 30, 2007. Pursuant to the settlement agreement, those class members must submit requests for their cases to be reopened. For more information about who qualifies as a class member and what steps they must take to pursue relief under the settlement agreement, read the settlement agreement and Q&A.

**It is critical that class members submit their requests before January 21, 2016**, so they do not lose the opportunity afforded under the settlement to reopen adjustment applications and corresponding I-212 applications for consent to reapply after previously being removed.

**USCIS issued a critical policy memorandum on August 25, 2015**, which modifies the initial guidance USCIS first issued on January 31, 2015.

The original guidance, from the January 31, 2015 policy memorandum, focused exclusively on whether a class member could demonstrate sufficient reliance on the old case law in order to qualify for having his or her case adjudicated under the law as established in *Perez-Gonzalez*. The updated guidance now clarifies that even in cases where applicants are not able to show reasonable reliance when they filed the adjustment application with the I-212, they nonetheless will be found eligible if the facts of the case support a finding that the burden of denial (of the applications) would be greater than the ordinary consequences of removal experienced by others. The guidance further clarifies that, "[a]though, in the absence of reliance, the burden would have to be greater than the ordinary consequences of removal, it does not need to amount to 'extreme

hardship.'" Accordingly, it is critical that class members submit evidence documenting the burden of removal that would occur if the *Perez-Gonzalez* decision were not applied to their case.

Moreover, as noted in the original guidance, individuals who filed their applications on or after *Perez-Gonzalez* (August 13, 2004) but on or before *Matter of Torres-Garcia*, have a presumption of reasonable reliance. In addition, those individuals who filed their applications after the district court issued the preliminary injunction and before *Duran Gonzales* (between November 13, 2006 and November 30, 2007), may also point to the preliminary injunction as a critical factor in demonstrating reasonable reliance.

The August 25, 2015 policy memo also clarifies that if applicants are challenged with respect to inadmissibility under INA § 212(a)(9)(C)(i)(I) (for unlawful presence of more than a year), that "the proof or presumption of reliance on *Perez-Gonzales* could be a strong persuasive factor in favor of finding reliance on *Acosta* as well."

Relatedly, this year, the Ninth Circuit published a decision applying the same reliance test that is applied in the *Duran Gonzales* settlement agreement, in the context of INA § 212(a)(9)(C)(i)(I). *See Acosta-Olivarria v. Lynch*, 799 F.3d 1271, 1274-75 (9th Cir. 2015). It is important to review this decision given its relevance to the settlement agreement.

Class counsel is aware of a number of cases that have been granted under the settlement agreement. Please keep us posted of any decisions and send emails to Matt@nwirp.org or Stacy@tolchinimmigration.com.

**For complete information about the *Duran Gonzalez* class action, see http://www.legalactioncenter.org/litigation/adjustment-status-under-%C2%A7-245i-noncitizens-previously-removed-duran-gonzalez-class-action.**